

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION)	Civil Action No. 01-CV-12257 PBS
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
ALL ACTIONS)	

**DEFENDANTS' MOTION TO FILE UNDER SEAL
PORTIONS OF THE DEPOSITION TRANSCRIPT OF
PATRICIA KAY MORGAN CITED IN THEIR MOTION TO COMPEL**

Pursuant to Local Rule 7.2 and Paragraphs 15 and 29 of the Protective Order entered by the Court on December 13, 2002 (the "Protective Order"), Defendants Novartis Pharmaceuticals Corporation ("Novartis") and Bristol-Myers Squibb Company ("BMS"), on behalf of Defendants in the captioned actions, respectfully request leave to file under seal portions of the deposition transcript of Patricia Kay Morgan referenced in Defendants' Memorandum In Support Of Defendants' Motion To Enforce The Subpoena For, And To Compel, The Deposition Of Patricia Kay Morgan and attached to the Declaration Of Saul P. Morgenstern In Support Of Defendants' Motion To Enforce The Subpoena For, And To Compel, The Deposition Of Patricia Kay Morgan. Should the Court allow Defendants' motion, unredacted versions of these materials are attached as Exhibit A and Exhibit B.

In support of its motion, Defendants state as follows:

1. Under the terms of the Protective Order, any court filings designated "Highly Confidential" shall be filed under seal. *See* Protective Order ¶ 15.
2. Counsel for First DataBank, Inc. ("FDB") produced a transcript of testimony Ms. Morgan gave on November 13, 2002 in *The State of Texas ex. rel. Ven-A-Care of*

the Florida Keys, Inc. v. Dey, Inc., et . al., No. GV002327 (Dist. Ct., Travis Cty. Texas) to Defendants but designated it “Highly Confidential” under Paragraph 15 of the Protective Order.

3. Although Defendants take no position on whether FDB properly designated Ms. Morgan’s deposition transcript, they are willing to honor FDB’s requests for the continued highly confidential treatment of the material. Accordingly, Defendants have separately filed a redacted public version of their filings that include excerpts from and reference to Ms. Morgan’s deposition in order to protect FDB’s confidentiality designation but to make non-confidential information available to the public in accordance with the prior orders of this Court.

4. Attached as Exhibit A is an unredacted version of Defendants’ Memorandum In Support Of Defendants’ Motion To Enforce The Subpoena For, And To Compel, The Deposition Of Patricia Kay Morgan.

5. Attached as Exhibit B is an unredacted version of the Declaration Of Saul P. Morgenstern In Support Of Defendants’ Motion To Enforce The Subpoena For, And To Compel, The Deposition Of Patricia Kay Morgan.

WHEREFORE, Defendants request leave to file the aforementioned documents under seal.

Dated: Boston, Massachusetts
July 30, 2004

Respectfully submitted,

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NOTICE OF FILING WITH CLERK'S OFFICE

Notice is hereby given that Exhibits A & B to the Motion To Seal Portions Of The Deposition Transcript Of Patricia Kay Morgan filed by Defendants Novartis Pharmaceuticals Corporation and Bristol-Myers Squibb Company on behalf of Defendants in the captioned actions have been manually filed with the Court.

Dated: Boston, Massachusetts
July 30, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benjamin M. Stern, on July 30, 2004, caused to be served the foregoing document by hand upon Robert J. Hawley, Esq., Office of General Counsel, The Hearst Corporation, 959 Eighth Avenue, New York, New York 10019, counsel for Patricia Kay Morgan and First DataBank, Inc., and by Verilaw upon all counsel of record.

/s/ Benjamin M. Stern

Benjamin M. Stern